

REMARKS

Claims 46-70 are pending Claims 1, 2, 7, 8, 11, 12, 14, 15, 17-19, 36, 38, and 40-45 have been cancelled. Claims 46-70 are newly presented. Reconsideration and allowance of the present application based on the following remarks are respectfully requested.

Applicant appreciates the courtesies extended to Applicant's representative by the Examiner during the April 13, 2006 telephone interview between the Examiner and Applicant's representative. During the interview, the Examiner and Applicant's representative discussed features of Applicant's invention in view of the prior art of record. No agreement was reached during the interview.

Claims Rejections Under 35 U.S.C. § 103

Claims 1, 2, 7, 8, 11, 12, 14, 15, 17-19, 36, 38, and 40-45 were rejected under 35 U.S.C. § 112, first paragraph. Applicant respectfully submits that this rejection is moot in view of the cancellation of claims 1, 2, 7, 8, 11, 12, 14, 15, 17-19, 36, 38, and 40-45.

Claims Rejections Under 35 U.S.C. § 103

Claims 1, 2, 7, 8, 14, 17, and 18 were rejected under 35 U.S.C. § 103(a) over Derr (U.S. Patent No. 1,869,844) in view of Nelson et al. (U.S. Patent No. 5,325,795); claims 1, 2, 7, 8, 11, 14, 17-19, 36, and 40-45 were rejected under 35 U.S.C. § 103(a) over Franz et al. (DE 196 08 002) in view of Nelson; claim 12 was rejected under 35 U.S.C. § 103(a) over Franz in view of Nelson and further in view of Sewell et al. (U.S. Patent No. 682,118); claim 15 was rejected under 35 U.S.C. § 103(a) over Franz in view of Nelson and further in view of Schultz et al. (U.S. Patent No. 4,924,785); and claim 38 was rejected under 35 U.S.C. § 103(a) over Franz in view of Nelson and further in view of Nora et al. (EP 0 695 214). Applicant respectfully submits that these rejections are moot in view of the cancellation of claims 1, 2, 7, 8, 11, 12, 14, 15, 17-19, 36, 38, and 40-45. To the extent that these references are relevant to the newly presented claims, the references are discussed below.

New claims

Claims 46-70 are newly presented, fully supported by the originally filed specification and believed allowable over the prior art of record.

Specifically, claims 46-70 recite several features which the prior art of record fails to teach or suggest. For example, the claims recite:

1. that one or more removable trays are laterally inserted in a frame;

2. that the one or more removable trays have a unitary construction and that the bottom part is structured so as to define orifices in the bottom of the one or more removable trays;
3. that the sidewalls of the one or more removable trays forms the outer walls of the vessel when the one or more trays are inserted into the vessel;
4. that the loading capacity of the one or more removable trays is at least about 1 cubic foot;
5. that the loading capacity of the one or more removable trays is at least about 2.5 cubic yards;
6. that a depth of the matrices is between about 4 and about 18 inches;
7. that a manifold is lowered after the tray is inserted into the vessel and is sealed to a top edge of the one or more removable trays so that air is forced to flow through the matrices and not around the matrices;
8. that a device for generating a vacuum for withdrawing gases is connected to the manifold; and creates a sub-atmospheric pressure inside of the vessel to reduce the boiling points of contaminants in the matrices;
9. that the one or more removable trays have fork lift pockets;
10. that a device for mechanically agitating the matrices includes at least one mixing flight located in an interior of the one or more removable trays and which moves in a plane that is substantially parallel to the bottom part of the one or more removable trays and a slave sprocket is coupled to a central drive shaft and is coupled to a drive sprocket via a drive chain in a configuration that reduces the power requirements of the motor which drives the mixing flight;
11. that the device includes between 2 and 4 of the one or more removable trays removable trays and that the manifold seals to an outer top edge of the between 2 and 4 of the one or more removable trays; and
12. that a hydraulic system is positioned under the manifold and lifts and lowers the manifold from the one or more removable trays.

None of the prior art of record, either individually or in combination, teaches or suggest at least these features of the claims.

For example, although Derr discloses a basket 14, Derr does not teach or suggest a manifold that is hydraulically moved up and down to be sealed to a top edge of a tray. Additionally, Derr fails to disclose that between 2 and 4 trays can be inserted into a single vessel and sealed to a single manifold as recited in the claims. Derr also fails to teach or

suggest, generating a vacuum for creating a sub-atmospheric pressure inside of the vessel to reduce the boiling points of contaminants in the matrices.

Similarly, Franz fails to teach or suggest the features of new claims 46-65. Specifically, Franz fails to disclose a tray with unitary construction, or a hydraulically controlled manifold, or that more than one tray can be inserted into a single vessel and sealed under a single manifold, or that a depth of the matrices may be between 4 and 18 inches (which promotes better removal of contaminants), or that a sub-atmospheric pressure inside of the vessel is created to reduce the boiling points of contaminants in the matrices.

Nelson, like Franz and Derr is also missing several features of the claimed invention. Nelson, for example, fails to teach or suggest a hydraulically controlled manifold, or that more than one tray can be inserted into a single vessel and sealed under a single manifold, or that a depth of the matrices may be between 4 and 18 inches (which promotes better removal of contaminants), or that a sub-atmospheric pressure inside of the vessel is created to reduce the boiling points of contaminants in the matrices. In fact, for example, Nelson actually teaches a container that is 7 feet tall.

The remaining reference also fail to disclose, teach or suggest, the features of claims 46-65.

Additionally, to the extent that the prior art of record is being combined, the Examiner appears to be inappropriately relying on hindsight to pick and choose portions of prior art references to reconstruct Applicant's invention and has failed to provide a teaching, motivation, or suggestion to combine the teachings of these four references. The Federal Circuit has made it clear that obviousness cannot be established simply by stitching together pieces of prior art using the patent as a template. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143 (Fed. Cir. 1985); *see also* *Loctite Corp. v. Ultraseal Ltd.*, 781 F.2d 861, 873 (Fed. Cir. 1985) (denouncing courts' tendency to depart from proper standard of nonobviousness "to the tempting but forbidden zone of hindsight."); *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988) ("One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."); *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999) ("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references."). Respectfully, it is an incorrect application of the law for the Examiner in this case to find pieces of art from which she believes she can pick and choose

different parts to construct Applicant's invention to render it obvious. The courts have uniformly found this approach to obviousness rejections to be incorrect.

Instead each of the cited references must provide some suggestion, motivation, or teaching for combining known components. See *Heidelberger Druckmaschinen AG v. Hantscho Commercial Prods., Inc.*, 21 F.3d 1068, 1072, 30 USPQ2d 1377, 1379 (Fed.Cir.1994) ("When the patented invention is made by combining known components to achieve a new system, the prior art must provide a suggestion or motivation to make such a combination."); *C.R. Bard, Inc. v. M3 Systems, Inc.*, 157 F.3d 1340 (Fed. Cir. 2000). There has been no motivation provided in this case to string together the individual pieces of the different references to try to form Applicant's claimed invention.

Further, according to MPEP 2143, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Additionally, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). MPEP 2141.02 and 2143.01.

MPEP 2143.01 also makes clear that if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). In this case, the Examiner suggests that certain drastic modifications to the references would be obvious. However, Applicant respectfully submits that these modifications would render the prior art devices inoperable for their intended purposes or would at least change the principle of operation of the prior art devices.


Conclusion

Therefore, all objections and rejections having been addressed, it is respectfully submitted that the present application is in a condition for allowance and a Notice to that effect is earnestly solicited.

Should any issues remain unresolved, the Examiner is encouraged to contact the undersigned attorney for Applicants at the telephone number indicated below in order to expeditiously resolve any remaining issues.

Respectfully submitted,

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